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**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

KATY MCGREGOR, <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> PAPA MURPHY’S INTERNATIONAL, LLC, a Foreign Corporation d/b/a PAPA MURPHY’S TAKE N BAKE; DOES 1 through 10, inclusive; and ROE ENTITIES 1 through 10, inclusive, <p style="text-align: center;">Defendants.</p>	Case No. _____ <p style="text-align: center;">COMPLAINT</p> <p style="text-align: center;">Jury Trial Requested</p>
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NOW comes Plaintiff, KATY MCGREGOR, who, by and through her attorneys of record, Craig Murphy and the law firm of Murphy & Murphy Law Offices, alleges upon information and belief as follows:

PARTIES

1. Plaintiff KATY MCGREGOR resides in Danville, California. Plaintiff resides within the jurisdiction of this Court and is a citizen of the State of California.

2. Defendant, PAPA MURPHY’S INTERNATIONAL LLC, d/b/a PAPA MURPHY’S TAKE N BAKE (hereinafter, “PAPA MURPHY’S”) is a Delaware corporation headquartered in Vancouver, Washington. Therefore, PAPA MURPHY’S INTERNATIONAL, LLC is a citizen of the States of Delaware and Washington. PAPA MURPHY’S sole member is Papa Murphy’s Company Stores, Inc., which is organized and existing under the laws of the State of Washington and has its principal offices in Vancouver, Washington. Papa Murphy’s Company Stores, Inc. is, therefore, a citizen of the State of Washington, and not California.

1 3. Defendant DOE 1 is the true and proper business entity that was the franchisee/
2 owner of the Papa Murphy's Take N Bake restaurant located at 3000 Danville Blvd., Ste D,
3 Alamo, California 94507. Upon information and belief, DOE 1 owned and operated said Papa
4 Murphy's restaurant at all times relevant to this matter. At this time, after diligent search,
5 Plaintiff is unaware of the ownership and actual business name of the franchisee/owner.
6 However, as stated above, it is believed and therefore alleged that DOE 1 is responsible for the
7 acts and omissions of Defendant Papa Murphy's restaurant in whole or in part as specified
8 herein. Plaintiff will ask leave of this Court to insert the true name and capacity for Defendant
9 DOE 1 when the true name and capacity of the DOE 1 is learned by Plaintiff.

10 4. Defendant ROE ENTITY 1 is the true and proper business entity that was the
11 grower and supplier of the romaine lettuce from the Yuma, Arizona growing region supplied to
12 the Papa Murphy's restaurant located at 3000 Danville Blvd., Ste D, Alamo, California 94507.
13 Upon information and belief, ROE ENTITY 1 supplied the romaine lettuce at all times relevant
14 to this matter. At this time, after diligent search, Plaintiff is unaware of the ownership and actual
15 business name of the lettuce grower/supplier. However, as stated above, it is believed and
16 therefore alleged that ROE ENTITY 1 is responsible for the acts and omissions of Defendant
17 Papa Murphy's restaurant in whole or in part as specified herein. Plaintiff will ask leave of this
18 Court to insert the true name and capacity for Defendant ROE ENTITY 1 when the true name
19 and capacity of the grower/supplier is learned by Plaintiff.

20 5. DOES 2 through 10 inclusive are persons, and ROE ENTITIES 2 through 10 are
21 corporations, related subsidiary or parent entities, associations, or business entities, whose true
22 names and identities and capacities are unknown to Plaintiff at this time. The DOE Defendants
23 are individual persons acting on behalf of or in concert with, or at the direction of, any of the
24 Defendants. The ROE Defendants may be corporations, associations, partnerships, subsidiaries,
25 holding companies, owners, predecessor or successor entities, joint ventures, parent corporations,
26 related business entities or the employer of any of the Defendants. Each named Defendant and
27 the DOE and ROE Defendants are legally responsible for the events and happenings stated in
28 this Complaint, and thus proximately caused injury and damages to Plaintiff. In particular, said

DOE and ROE Defendants are responsible in full or in part for the growing, distribution, processing, preparation, contamination, and sale of the ingredients in and the romaine lettuce sold to or by Defendant Papa Murphy's restaurant. Plaintiff will ask leave of this Court to insert the true names and capacities for such DOE and ROE Defendants when discovered to substitute those true names as defendants into these proceedings for said DOE and ROE Defendants.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a) because the matter in controversy exceeds \$75,000.00, exclusive of costs, it is between citizens of different states, and because the Defendants have certain minimum contacts with the State of California such that maintenance of the suit in this district does not offend traditional notions of fair play and substantial justice.

7. Venue in the United States District Court for the Eastern District of California is proper pursuant to 28 U.S.C. § 1391(a)(2) because a substantial part of the events or omissions giving rise to the Plaintiff's claims and causes action occurred in this judicial district, and because the Defendants are subject to personal jurisdiction in this judicial district at the time of the commencement of the action.

GENERAL ALLEGATIONS

Prior Outbreaks Linked to Lettuce and Other Leafy Greens

8. *E. coli* O157:H7 outbreaks associated with lettuce and other leafy greens are by no means a new phenomenon. Outlined below is a list of *E. coli* outbreaks involving contaminated lettuce or leafy greens:

Date	Causative Agent	Illnesses Reported	Source
Nov. 2017- Dec. 2017	<i>E. coli</i> O157:H7	41, 1 death	Romaine lettuce
Dec. 2015-Jan. 2016	<i>Listeria monocytogenes</i>	19, 1 death	Package salads

Apr. 2015	Escherichia coli, Shiga toxin-producing	7	Prepackaged leafy greens
Mar. 2015	E. coli O157:H7	12	Leafy greens
Jul. 2014	E. coli O111	15	Salad/cabbage served at Applebee's and Yard House (Minnesota)
Oct. 2013	E. coli O157:H7	33	Pre-packaged salads and sandwich wraps (California)
Jul. 2013	E. coli O157:H7	94	Lettuce served at Federico's Mexican Restaurant
Jul. 2013	Cyclospora	140 (Iowa); 87 (Nebraska)	Salad mix, cilantro
Dec. 2012 – Jan. 2013	E. coli O157:H7	31	Shredded lettuce from Freshpoint, Inc.
Oct. 2012	E. coli O157:H7	33	Leafy greens salad mix (Massachusetts)
Apr. 2012	E. coli O157:H7	28	Romaine lettuce
Dec. 2011	Salmonella Hartford	5	Lettuce; roast beef

Dec. 2011	Norovirus	9	Lettuce, unspecified
Oct. 2011	E. coli O157:H7	58	Romaine lettuce
Oct. 2011	E. coli O157:H7	26	Lettuce
Aug. 2011	N/A	8	Lettuce; onions; tomatoes
Jul. 2011	Cyclospora cayatenensis	99	Lettuce based salads
Jun. 2011	Norovirus	23	Garden salad
Apr. 2011	Salmonella Typhimuriu m	36	Multiple salads
Feb. 2011	Norovirus	24	Garden salad
Jan. 2011	Norovirus	93	Lettuce; salad, unspecified
Jul.-Oct. 2010	Salmonella Java	136	Salad vegetable
May 2010	E. coli O145	33 (26 lab-confirmed)	Romaine Lettuce grown in Arizona
Apr. 2010	Salmonella Hvitittingfoss	102	Lettuce, tomatoes, and olives served at Subway restaurants
Jan. 2010	E. coli	260	Lettuce grown in

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			France
Dec. 2009	Norovirus	16	Lettuce
Aug. 2009	Salmonella Typhimurium	27	Lettuce
Aug. 2009	Salmonella spp	124	Romaine lettuce; Recalls issued by Tanimura & Antle, Inc. (lettuce), Muranaka Farm, Inc. (parsley), and Frontera Produce (cilantro)
Jul. 2009	Salmonella Typhimurium	145	Shredded lettuce from Taylor Farms
May. 2009	Norovirus	10	Lettuce, onion, and tomato in chicken salad
Nov. 2008	E. coli O157:H7	130	Romaine lettuce
Oct. 2008	E. coli O157:H7	2	Chopped shredded iceberg lettuce (Michigan)
Oct. 2008	E. coli O157:H7	43 (Johnathan's Family)	Lettuce

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		Restaurant), 21 (Little Red Rooster Restaurant), 12 (M.T. Bellies Restaurant)	
Oct. 2008	Norovirus	64	Tomato relish, lettuce-based salad
Aug.-Sep. 2008	E. coli O157:H7	74	Lettuce from Aunt Mid's Produce Company (California)
Aug.-Oct. 2008	E. coli O157:H7	13	Spinach (Oregon)
May. 2008	E. coli O157:H7	10	Prepackaged lettuce
May. 2008	E. coli O157:H7	6	Pre-packaged salad
May 2008	E. coli O157:H7	9	Lettuce (California, U.S.)
Apr. 2008	Salmonella Branderup	12	Green salad, tomato
Jul. 2007	Shigella sonnei	72	Salad
Jul. 2007	E. coli O157:H7	26	Lettuce
Feb. 2007	Norovirus	8	Lettuce

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Jan. 2007	Norovirus	9	Salad
Nov. 2006	E. coli O157:H7	78	Lettuce
Oct. 2006	E. coli O157:H7	205	Pre-packaged baby spinach from Dole Food Company (California)
Sep. 2006	Norovirus	9	Salad
Sep. 2005	E. coli O157:H7	34	Prepackaged bagged lettuce from Dole Food Company
Jun. 2006	Salmonella Typhimurium	18	Lettuce, tomatoes
Oct. 2005	E. coli O157:H7	12	grapes, green; lettuce, prepackaged
Nov. 2004	E. coli O157:H7	6	Lettuce, unspecified
Jul. 2004	Salmonella Newport	97	Iceberg lettuce
Nov. 2003	E. coli O157:H7	19	Spinach, unspecified
Oct. 2003	E. coli O157:H7	16	Spinach, unspecified
Sep. 2003	E. coli O157:H7	51	Lettuce-based salads, unspecified

Nov. 2002	E. coli O157:H7	60	Romaine lettuce
Jul. 2002	E. coli O157:H7	32	Romaine lettuce from Spokane Produce (Washington)
Jul. 2002	E. coli O157:H7	55	Caesar salad
Nov. 2001	E. coli O157:H7	20	Lettuce-based salads, unspecified
Oct. 2000	E. coli O157:H7	6	Salad
May 2000	Campylobacter jejuni	13	Salad
May 2000	Norovirus	3	Salad
Feb. 2000	Norovirus	7	Salad
Oct. 1999	E. coli O157:H7	45	Lettuce, salad
Oct. 1999	E. coli O157:H7	47	Salad
Oct. 1999	Norovirus	16	Salad
Sep. 1999	E. coli O157:H11	6	Lettuce
Sep. 1999	Norovirus	115	Lettuce
Sep. 1999	E. coli O111:H8	58	Salad

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Aug. 1999	Norovirus	25	Salad
May 1999	Norovirus	28	Salad
Feb. 1999	E. coli O157:H7	72	Lettuce
May 1998	E. coli O157:H7	2	Salad
May 1996	E. coli O157:H7	61	Lettuce
Oct. 1995	E. coli O153:H46	11	Lettuce
Sep. 1995	E. coli O153:H47	30	Lettuce
Sep. 1995	E. coli O157:H7	21	Lettuce
Jul. 1995	E. coli O153:H48	74	Lettuce

The 2018 E. coli O157:H7 Outbreak Linked to Romaine Lettuce from Yuma

9. As of May 16, 2018, there are at least 172 cases in 32 states, as follows: Alaska (8), Arizona (8), California (39), Colorado (3), Connecticut (2), Florida (1), Georgia (4), Idaho (11), Illinois (2), Kentucky (1), Louisiana (1), Massachusetts (3), Michigan (5), Minnesota (12), Mississippi (1), Missouri (1), Montana (8), New Jersey (8), New York (5), North Dakota (2), Ohio (6), Oregon (1), Pennsylvania (21), South Dakota (1), Tennessee (3), Texas (1), Utah (1), Virginia (1), Washington (7), and Wisconsin (3). Six are reported ill in Canada.

10. Illnesses started on dates ranging from March 13, 2018 to May 2, 2018. Ill people range in age from 1 to 88 years, with a median age of 29. Sixty-five percent of ill people are female. Of 157 people with information available, 75 (48%) have been hospitalized, including 20 people who developed hemolytic uremic syndrome, a type of kidney failure. One death was reported from California.

11. Illnesses that occurred after April 21, 2018, might not yet be reported due to the

1 time it takes between when a person becomes ill with *E. coli* and when the illness is reported.
2 This takes an average of two to three weeks.

3 12. State and local health officials continue to interview ill people to ask about the
4 foods they ate and other exposures before they became ill. 102 (91%) of 112 people interviewed
5 reported eating romaine lettuce in the week before their illness started. Most people reported
6 eating a salad at a restaurant, and romaine lettuce was the only common ingredient identified
7 among the salads eaten. The restaurants reported using bagged, chopped romaine lettuce to make
8 salads. At this time, ill people are not reporting whole heads or hearts of romaine. Information
9 collected to date indicates that chopped romaine lettuce from the Yuma, Arizona growing region
10 could be contaminated with *E. coli* O157:H7 and could make people sick.

11 13. Federal and state public health officials continue to investigate this outbreak.
12 Among other things, these investigators are currently trying to determine the precise location(s)
13 at which the contaminated lettuce was grown and/or processed.

14 ***E. coli* O157:H7 Infection and Hemolytic Uremic Syndrome**

15 14. *Escherichia coli* is the name of a common family of bacteria, most members of
16 which do not cause human disease. *E. coli* O157:H7 is a specific member of this family that can
17 cause bloody diarrhea (hemorrhagic colitis) in humans. In the years since *E. coli* O157:H7 was
18 first identified as a cause of diarrhea, this bacterium has established a reputation as a significant
19 public health hazard.

20 15. *E. coli* O157:H7 lives in the intestines of cattle and other ruminants. *E. coli*
21 O157:H7 is also notable among pathogenic bacteria for its extremely low infectious dose—that
22 is, the number of bacteria necessary to induce infection in a person. While for most pathogenic
23 bacteria it takes literally millions of bacterial colonies to cause illness, it is now known that
24 fewer than 50 *E. coli* O157:H7 bacteria can cause illness in a child. The practical import is that
25 even a microscopic amount of exposure can trigger a devastating infection.

26 16. The most severe cases of the *E. coli* O157:H7 infection occur in young children
27 and in the elderly, presumably because the immune systems in those age populations are the
28 most vulnerable. After a susceptible individual ingests *E. coli* O157:H7, the bacteria attach to

1 the inside surface of the large intestine and initiates an inflammatory reaction of the intestine.
2 What ultimately results is the painful bloody diarrhea and abdominal cramps characteristic of the
3 intestinal illness.

4 17. The mean incubation period (time from ingestion to the onset of symptoms) of *E.*
5 *coli* O157:H7 is estimated to be two to four days (range, 1-21 days). Typically, a patient with an
6 acute *E. coli* O157:H7 infection presents with abdominal cramps, bloody diarrhea, and vomiting.
7 The duration of diarrhea in children with *E. coli* O157:H7 infections are significantly longer than
8 that of adults.

9 18. *E. coli* O157:H7 can produce a wide spectrum of disease from mild, non-bloody
10 diarrhea, to severe bloody diarrhea accompanied by excruciating abdominal pain to life-
11 threatening complications. In most infected individuals, the intestinal illness lasts about a week
12 and resolves without any long-term effects. Antibiotics do not appear to aid in combating these
13 infections, and recent medical studies suggest that antibiotics are contraindicated for their risk of
14 provoking more serious complications. Apart from good supportive care, which should include
15 close attention to hydration and nutrition, there is no specific therapy.

16 19. About 10% of individuals with *E. coli* O157:H7 infections (mostly young
17 children) go on to develop hemolytic uremic syndrome (HUS), a severe, potentially life-
18 threatening complication. The essence of the syndrome is described by its three central features:
19 destruction of red blood cells, destruction of platelets (those blood cells responsible for clotting),
20 and acute renal failure due to the formation of micro-thrombi that occlude microscopic blood
21 vessels that make up the filtering units within the kidneys.

22 20. There is no known therapy to halt the progression of HUS. The active stage of
23 the disease usually lasts one to two weeks, during which a variety of complications are possible.
24 HUS is a frightening illness that even in the best American medical facilities has a mortality rate
25 of about 5%. The majority of HUS patients require transfusion of blood products and develop
26 complications common to the critically ill.

27 **Katy McGregor's Injuries**

28 21. On or about April 12, 2018, Ms. McGregor consumed romaine lettuce from the

1 Yuma, Arizona growing region in a salad that she purchased from the Papa Murphy's
2 restaurant located at 3000 Danville Blvd. Ste D, Alamo, California 94507. The romaine lettuce
3 was contaminated by *E. coli* O157:H7 bacteria, leading to Ms. McGregor's *E. coli* O157:H7
4 infection and related injuries.

5 22. Ms. McGregor began to experience severe gastrointestinal symptoms on or about
6 April 15, 2018. Symptoms included abdominal cramps, bloody diarrhea, fatigue and extreme
7 pain. Symptoms progressed and, on April 19, 2018, Ms. McGregor was seen at a local
8 emergency room, where she was found to be dehydrated. A stool sample tested positive for *E.*
9 *coli* O157:H7.

10 23. Ms. McGregor was not hospitalized, but has continued to experience debilitating
11 symptoms relating to her *E. coli* O157:H7 infection acquired from the contaminated food product
12 that the Defendants manufactured and sold her. She continues to suffer from severe fatigue and
13 lethargy, decreased appetite, and painful and irregular gastrointestinal function. She is currently
14 scheduled to go through additional medical tests and procedures relating to her injuries.

15 24. Ms. McGregor's *E. coli* O157:H7 positive stool isolate has tested positive for the
16 same strain of *E. coli* O157:H7 involved in the national *E. coli* O157:H7 outbreak linked to
17 romaine lettuce from Yuma, Arizona, described previously. She is a confirmed case in the
18 outbreak.

19 **CAUSES OF ACTION**

20 **COUNT I - BREACH OF WARRANTY**

21 25. The Plaintiff incorporates by reference and makes a part of this count each and
22 every foregoing paragraph of this Complaint.

23 26. Defendants produced, distributed, and sold the contaminated food product that
24 injured the Plaintiff, and caused her *E. coli* O157:H7 infection. The Defendants are, therefore,
25 manufacturers, distributors, and sellers of an adulterated food product, and the adulterated food
26 product reached the Plaintiff without substantial change from the condition in which it was sold
27 by the Defendant.

28 27. The Defendants are subject to liability to the Plaintiff for its breaches of express

1 and implied warranties made to the Plaintiff with respect to the food product sold to her,
2 including the implied warranties of merchantability and of fitness for a particular use. Further,
3 the Defendants expressly warranted, through its sale of food to the public, and by the statements
4 and conduct of its employees and agents, that the food product ultimately sold to the Plaintiff
5 was fit for human consumption, and not otherwise adulterated or injurious to health.

6 28. The food product sold by the Defendants and ultimately consumed by Plaintiff,
7 which product was contaminated with *E. coli* O157:H7 and related filth and adulteration, would
8 not pass without exception in the trade, and was thus in breach of the implied warranty of
9 merchantability.

10 29. The Plaintiff further alleges that the contaminated food sold by the Defendants
11 and consumed by the Plaintiff was not fit for the uses and purposes intended by either the
12 Plaintiff or the Defendants, *i.e.*, human consumption, and that this product was therefore in
13 breach of the implied warranty of fitness for its intended use.

14 30. As a further direct and proximate result of the conduct of Defendants and their
15 agents, servants, and/or employees as aforesaid, Plaintiff suffered an *E. coli* O157:H7 infection
16 and the adverse effects associated with the same, as described in previous paragraphs of this
17 complaint.

18 31. As a further direct and proximate result of the conduct of Defendants and their
19 agents, servants, and/or employees, Plaintiff was forced to endure great pain, suffering, and
20 inconvenience and may endure the same in the future. She was forced to submit to medical,
21 medicinal, and therapeutic care and may be forced to submit to the same in the future.

22 32. As a further direct and proximate result of the conduct of Defendants and their
23 agents, servants, and/or employees, Plaintiff suffered an inability to perform the activities of
24 daily living or some of them.

25 33. As a further direct and proximate result of the conduct of Defendants and their
26 agents, servants, and/or employees, Plaintiff was forced to expend sums of money for doctors,
27 hospitals, and/or other items necessary for his proper care and treatment.

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COUNT II

STRICT LIABILITY

34. The Plaintiff incorporates by reference and makes a part of this Count each and every foregoing paragraph of this Complaint.

35. The Defendants owed a duty to the Plaintiff to manufacture and sell only food that was not adulterated, was fit for human consumption, was reasonably safe in construction, and was free of pathogenic bacteria or other substances injurious to human health. The Defendants breached this duty.

36. The Defendants owed a duty to the Plaintiff to provide adequate warnings about the non-obvious danger of its food products, including warnings and instructions indicating that the food might contain pathogenic bacteria, including *E. coli* O157:H7. The Defendants breached this duty.

37. The Defendants owed a duty to the Plaintiff to prepare, serve, and sell food that was fit for human consumption, and that was safe to the extent contemplated by a reasonable and ordinary consumer. The Defendants breached this duty.

38. Because the food that the Plaintiff purchased and consumed was adulterated, not fit for human consumption, not reasonably safe in design and construction, lacked adequate warnings and instructions, and was unsafe to an extent beyond that contemplated by the ordinary consumer, the Defendants are liable to the Plaintiff for the harm proximately caused to the her by its manufacture and sale of contaminated and adulterated food products, and as such the Defendants are strictly liable to the Plaintiff for such harm.

COUNT III

NEGLIGENCE

39. Plaintiff incorporates by reference and makes a part of this Count each and every foregoing paragraph of this Complaint.

40. The Defendants had a duty to comply with all statutory and regulatory provisions that pertained or applied to the manufacture, distribution, storage, labeling, and sale of the food products that injured Plaintiff, including the applicable provisions of the Federal Food, Drug and

1 Cosmetic Act, and similar California food and public health statutes, including without limitation
2 the provisions of the California Health & Safety Code Article 5, all of which prohibit the
3 manufacture and sale of any food that is adulterated, or otherwise injurious to health.

4 41. The food product that Defendants manufactured and sold, and that the Plaintiff
5 purchased and consumed, was adulterated within the meaning of the federal Food, Drug and
6 Cosmetic Act, and similar California statutes, because it contained a deleterious substance that
7 rendered it injurious to health, *i.e.*, *E. coli* O157:H7 bacteria.

8 42. The Defendants violated federal, state, and local food safety regulations by its
9 manufacture and sale of adulterated food. These federal, state, and local food safety regulations
10 are applicable here, and establish a positive and definite standard of care in the manufacture and
11 sale of food. The violation of these regulations constitutes negligence as a matter of law.

12 43. The Plaintiff is in the class of persons intended to be protected by these statutes
13 and regulations, and Plaintiff was injured as the direct and proximate result of the Defendants'
14 violation of applicable federal, state, and local food safety regulations.

15 44. The Defendants were negligent in the manufacture, distribution, and sale of a food
16 product that was adulterated with *E. coli* O157:H7, not fit for human consumption, and not
17 reasonably safe because adequate warnings or instructions were not provided.

18 45. Once the Defendants learned, or in the exercise of reasonable care should have
19 learned, of the dangers associated with preparing and selling food, including, but not limited to,
20 cross-contamination between foods, and the dangers associated with improperly cleaned or
21 washed food, it had a duty to warn the Plaintiff, but failed to do so.

22 46. The Defendants had a duty to use supplies and raw materials in producing its food
23 products that were in compliance with applicable federal, state, and local laws, ordinances and
24 regulations; that were from reliable sources; and that were clean, wholesome, free from
25 adulteration and fit for human consumption, but failed to do so, and therefore breached that duty.

26 47. The Defendants were negligent in the selection of its suppliers, or other agents or
27 subcontractors, and failed to adequately supervise them, or provide them with adequate
28 standards, and, as a result, produced and sold food that was adulterated with *E. coli* O157:H7.

PRAYER FOR RELIEF

b. Such additional and/or further relief, including interest, costs, and reasonable attorney fees, as this Court deems just and equitable.

JURY TRIAL DEMANDED

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